

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 9987

IN THE MATTER OF:

Served October 11, 2006

Investigation of Unauthorized	)	Case No. MP-2004-164
Transfer of Certificate No. 85 and	)	
Unauthorized Operations of JIMMIE	)	
LEE DAVENPORT and JAMES L. HUGHES	)	

This matter is before the Commission on respondents' response to Order No. 9851, served August 18, 2006, assessing a \$6,000 civil forfeiture and revoking Certificate No. 85.

**I. BACKGROUND**

On April 23, 2004, the Commission received a \$100 check in payment of the 2004 annual fee for V.I.P. Tours, Inc., WMATC No. 85. The check was drawn on the account of "VIP Tours LLC". Commission records identify Jimmie Lee Davenport and James L. Hughes as the sole shareholders and officers of V.I.P. Tours, Inc., and Mr. Hughes as the organizer of V.I.P. Tours, L.L.C.

On August 31, 2004, the Commission obtained records from the Taxpayer Services Division of the Maryland Department of Assessments and Taxation (MDAT), that show both V.I.P. Tours, Inc., and V.I.P. Tours, L.L.C., forfeited their charters on October 7, 2003. Under Maryland law, a corporation ceases to exist upon forfeiture of its charter, and all assets owned by a corporation at the time of forfeiture are transferred by operation of law to the corporation's directors.<sup>1</sup>

Under Article XI, Section 11, of the Compact, Commission approval must be obtained to transfer a WMATC Certificate of Authority, and a person other than the person to whom an operating authority is issued by the Commission may not lease, rent, or otherwise use that operating authority.

Accordingly, Order No. 8283 gave respondents thirty days to show cause why the Commission should not assess a civil forfeiture and revoke Certificate No. 85 for respondents' knowing and willful violation of Article XI, Section 11, of the Compact. The response deadline was extended twice at respondents' request. Respondents eventually submitted proof of reviving the charter of V.I.P. Tours, Inc.

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<sup>1</sup> *Cloverfields Improvement Ass'n, Inc., v. Seabreeze Properties, Inc.*, 362 A.2d 675 (Md. Ct. Spec. App. 1976), *aff'd*, 373 A.2d 935 (Md. 1977).

Under Maryland law, upon revival of a corporate charter: "If otherwise done within the scope of its charter, all contracts or other acts done in the name of the corporation while the charter was void are validated, and the corporation is liable for them."<sup>2</sup> Order No. 9538 therefore directed respondents to produce any and all business records pertaining to the charter forfeiture period to determine whether any operations were conducted during that time and, if so, whether they were conducted in the name of the corporation. Order No. 9538 directed respondents to present their revenue vehicles for inspection, as well. The order further provided that Certificate No. 85 would stand suspended and be subject to revocation without further proceeding upon respondents' failure to timely comply.

Respondents produced a number of business records pertaining to the charter forfeiture period but failed to present their vehicles for inspection, despite ample time to do so.

It is clear from respondents' documents that they conducted operations during the charter forfeiture period, but it is not clear that those operations were conducted in the name of the corporation. Income tax returns show that all revenue and expense arising out of said operations were reported by VIP Tours LLC, not V.I.P. Tours, Inc. Likewise, the bank records produced by respondents are for VIP Tours LLC, not V.I.P. Tours, Inc.

On the other hand, the Commission had on file during the relevant period a WMATC Insurance Endorsement in the name of V.I.P. Tours, Inc. But this appears to be the extent of any evidence tending to establish that operations were conducted in the name of V.I.P. Tours, Inc. In fact, many of the documents are ambiguous, identifying the carrier merely as VIP Tours.

Given that evidence, the Commission could not say that respondents had demonstrated by a preponderance of the evidence that the operations conducted while the charter was forfeited were conducted in the corporation's name.

Inasmuch as this was the second time respondents had violated the Compact by forfeiting the corporate charter of V.I.P. Tours, Inc., and operating under color of Certificate No. 85,<sup>3</sup> Order No. 9851 assessed a civil forfeiture of \$5,000 for respondents' repeat offense. Further, Order No. 9851 assessed a civil forfeiture of \$1,000 for respondents' knowing and willful failure to present any vehicles for inspection and revoked Certificate No. 85 for respondents' willful failure to comply with Order No. 9538.

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<sup>2</sup> MD. CORPS. & ASS'NS CODE § 3-512(1).

<sup>3</sup> See *In re V.I.P. Tours, Inc., & V.I.P. Tours, L.L.C.*, No. MP-01-98, Order No. 6577 (Mar. 20, 2002) (assessing forfeiture for unauthorized transfer and operations).

## II. RESPONSE AND DECISION

Respondents request that the Commission reduce the forfeiture, extend the time for payment by establishing a payment plan, and reconsider the revocation of Certificate No. 85.

A party to a proceeding affected by a final order or decision of the Commission may file within 30 days of its publication a written application requesting Commission reconsideration of the matter involved, and stating specifically the errors claimed as grounds for the reconsideration.<sup>4</sup> If the application is granted, the Commission shall rescind, modify, or affirm its order or decision with or without a hearing, after giving notice to all parties.<sup>5</sup>

Respondents timely filed their response on September 18, 2006, and in it claim that their revival of Carrier No. 85's corporate charter "in effect" validated all "acts done during the period of revocation." But respondents offer no new evidence on this issue. Hence, there is no basis for reaching a different conclusion on reconsideration.

Any reduction of the forfeiture assessed in Order No. 9851 must take into account the purposes served by assessing a forfeiture in the first place. The civil forfeiture provision of the Compact serves at least two functions: deterrence of future violations and disgorgement of unjust profits.<sup>6</sup> In the instant case, the 2003 and 2004 federal income tax returns for the LLC show a combined profit of \$28,096, which appears to have stemmed chiefly from respondents' unlawful operations. Therefore, we shall not reduce the \$5,000 forfeiture for unauthorized operations.

As for respondents' failure to present their vehicle(s) for inspection, it appears the Commission has assessed \$250 in the past for such violations.<sup>7</sup> Accordingly, we shall reduce the \$1,000 forfeiture to \$250, and respondents shall have the option of paying the entire \$5,250 reduced forfeiture in monthly installments.<sup>8</sup>

Finally, respondents challenge the revocation of Certificate No. 85 as "overly harsh." But the fact is respondents have yet to comply with Order No. 9538, which is the reason Certificate No. 85 was revoked. Therefore, the revocation shall stand.

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<sup>4</sup> Compact, tit. II, art. XIII, § 4(a).

<sup>5</sup> Compact, tit. II, art. XIII, § 4(d).

<sup>6</sup> *In re Zohery Tours Int'l, Inc.*, No. MP-02-46, Order No. 7096 (Mar. 19, 2003) (on reconsideration).

<sup>7</sup> See *In re William E. Gillison, t/a Quiana Tours, Quiana Tours, Inc., & Baron Transp., Inc.*, No. MP-02-97, Order No. 7066 (Mar. 4, 2003) (assessing \$250 for failure to present vehicles).

<sup>8</sup> See Order No. 7096 (approving payment plan).

THEREFORE, IT IS ORDERED:

1. That the application for reconsideration of Order No. 9851 is granted.

2. That the revocation of Certificate No. 85 is affirmed.

3. That the \$6,000 civil forfeiture assessed in Order No. 9851 is hereby reduced to \$5,250.

4. That respondents shall pay the reduced forfeiture to the Commission, by money order, certified check, or cashier's check, within thirty days from the date of this order; provided, that in the alternative, respondents may pay the reduced forfeiture in ten equal monthly installments of \$525 on the first of each month beginning November 2006.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:



William S. Morrow, Jr.  
Executive Director